

UPDATE #1

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UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Name of Assigned Judge	CHARLES R. NORGLE	Sitting Judge if Other Than Assigned Judge	
Case Number	88 C 630	Date	03/18/88 @ 10:30 a.m.
Case Title	UNITED STATES OF AMERICA v. MANVILLE SALES CORPORATION, INC.		

MOTION: (In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3d-party plaintiff, and (b) state briefly the nature of the motion being presented.)

ATTORNEYS FOR PLAINTIFF: ANTON R. VALUKAS, United States Attorney
ATTN: LINDA A. WAWZENSKI, AUSA-Civil Division (312/353-1983)
NATURE OF MOTION: MOTION FOR ENTRY OF CONSENT DECREE

DOCKET ENTRY: (The balance of this form is reserved for notations by court staff.)

(1) <input type="checkbox"/>	Judgment is entered as follows:	(2) <input checked="" type="checkbox"/>	[Other docket entry:]
Plaintiff's motion for entry of consent decree lodged with this court on February 26, 1988 is granted.			
(3)	Filed motion of [use listing in "MOTION" box above]		
(4)	Brief in support of motion due _____		
(5)	Answer brief to motion due _____ Reply to answer brief due _____		
(6)	<input type="checkbox"/> Hearing <input type="checkbox"/> Ruling on _____ set for _____ at _____		
(7)	Status hearing <input type="checkbox"/> held <input type="checkbox"/> continued to <input type="checkbox"/> set for <input type="checkbox"/> re-set for _____ at _____		
(8)	Pretrial conference <input type="checkbox"/> held <input type="checkbox"/> continued to <input type="checkbox"/> set for <input type="checkbox"/> re-set for _____ at _____		
(9)	Trial <input type="checkbox"/> set for <input type="checkbox"/> re-set for _____ at _____		
(10)	<input type="checkbox"/> Bench trial <input type="checkbox"/> Jury trial <input type="checkbox"/> Hearing held and continued to _____ at _____		
(11)	This case is dismissed <input type="checkbox"/> without <input type="checkbox"/> with prejudice and without costs <input type="checkbox"/> by agreement <input type="checkbox"/> pursuant to <input type="checkbox"/> FRCP 4(j) (failure to serve) <input type="checkbox"/> General Rule 21 (want of prosecution) <input type="checkbox"/> FRCP 41(a)(1) <input type="checkbox"/> FRCP 41(a)(2)		
(12)	[For further detail see <input type="checkbox"/> order on the reverse of <input type="checkbox"/> order attached to the original minute order form.]		
<input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail CIV-31 form.		205 MAR 21 1988 MAR 21 1988 MAR 21 1988	
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Date/time received in central Clerk's Office		Document # 10	

NO FEE

JUDGE NORGLE

MAGISTRATE ROSEMOND

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

U.S. DISTRICT COURT

DOCKETED

JAN 26 1988

88C0630

UNITED STATES OF AMERICA,
Plaintiff,
v.
MANVILLE SALES CORPORATION,
Defendant.

COMPLAINT

The United States of America, by and through the undersigned attorneys, by authority of the Attorney General of the United States and acting at the request of the United States Environmental Protection Agency ("U.S. EPA"), alleges that:

STATEMENT OF THE CASE

1. This is a civil action brought by the United States under Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, P.L. 99-499, of for injunctive relief concerning an imminent and substantial endangerment to the public health and welfare and the environment because of actual and threatened releases of hazardous substances from a facility owned and operated by the defendant at a site in Waukegan, Illinois, and for civil penalties.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Name of Assigned Judge	CHARLES R. NORGLE	Sitting Judge if Other Than Assigned Judge	
Case Number	88 C 630	Date	02/26/88 @ 10:30 a.m.
Case Title	UNITED STATES OF AMERICA vs. MANVILLE SALES CORPORATION, INC.		
	Sent for Microfilming		

MOTION: (In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3d-party plaintiff, and (b) state briefly the nature of the motion being presented.)

MAR 1 1987

MAR 1 1988

Filed on

ATTORNEYS FOR PLAINTIFF: ANTON R. VALUKAS, United States Attorney

ATTN: LINDA A. WAWZENSKI, AUSA-Civil Division (312/353-1983)

TITLE OF MOTION: MOTION FOR LEAVE TO LODGE CONSENT DECREE

DOCKET ENTRY: (The balance of this form is reserved for notations by court staff.)

(1) ☒ Judgment is entered as follows:(2) ☐ [Other docket entry:]

The motion for leave to lodge consent decree is granted.

- (3) ☐ Filed motion of [use listing in "MOTION" box above].
- (4) ☐ Brief in support of motion due _____.
- (5) ☐ Answer brief to motion due _____ Reply to answer brief due _____.
- (6) ☐ Hearing ☐ Ruling on _____ set for _____ at _____.
- (7) ☐ Status hearing ☐ held ☐ continued to ☐ set for ☐ re-set for _____ at _____.
- (8) ☐ Pretrial conference ☐ held ☐ continued to ☐ set for ☐ re-set for _____ at _____.
- (9) ☐ Trial ☐ set for ☐ re-set for _____ at _____.
- (10) ☐ Bench trial ☐ Jury trial ☐ Hearing held and continued to _____ at _____.
- (11) ☐ This case is dismissed ☐ without ☐ with prejudice and without costs ☐ by agreement ☐ pursuant to ☐ FRCP 4(j) (failure to serve) ☐ General Rule 21 (want of prosecution) ☐ FRCP 41(a)(1) ☐ FRCP 41(a)(2)
- (12) ☒ [For further detail see ☐ order on the reverse of ☒ order attached to the original minute order form.]

No notices required.

Notices mailed by judge's staff.

Notified counsel by telephone.

Docketing to mail notices.

Mail CIV-31 form.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOCKET

UNITED STATES OF AMERICA,)	MAR - 1 1988
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 88 C 630
)	
MANVILLE SALES CORPORATION, INC.)	JUDGE CHARLES R. NORGLER
)	
)	
Defendant.)	

CONSENT DECREE

PREAMBLE

A. The United States Environmental Protection Agency ("U.S. EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9605, placed the Johns-Manville Waukegan Disposal Area in Waukegan, Illinois (the "Facility" as specifically defined in Article III of this Consent Decree) on the National Priorities List, which is set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658;

B. U.S. EPA and Manville Sales Corporation ("Manville"), on June 14, 1984, entered into an Administrative Order by Consent ("Consent Order"), under which Manville agreed to

conduct a Remedial Investigation and Feasibility Study ("RI/FS") pursuant to 40 C.F.R. 300.68 for the Facility;

C. Manville submitted a Remedial Investigation ("RI") Report on July 3, 1985, and submitted a Feasibility Study ("FS") Report in December 1986 recommending remedial action consisting, inter alia, of an 18-inch thick soil cover with vegetation over specified areas of the Facility;

D. The U.S. EPA submitted an Addendum to the Final Feasibility Study Report on January 28, 1987, which recommended, inter alia, a cover thickness of 24 inches of compacted, non-asbestos containing material, with vegetation, to be placed over the aforementioned areas of the Facility;

E. The FS Report, as modified by the Addendum, contains a proposed plan for remedial action at the Facility;

F. On or about January 23, 1987, U.S. EPA, pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, published notice of the completion of the RI/FS and of the proposed plan for remedial action and provided opportunity for public comment to be submitted in writing to U.S. EPA in February 1987 or orally at a public meeting held in the City of Waukegan, Illinois, on February 9, 1987;

G. U.S. EPA, pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, has kept a transcript of the public meeting and has made this transcript available to the public;

H. Various persons have provided comments on U.S. EPA's proposed plan for remedial action, and U.S. EPA has provided a summary of responses to the significant comments, criticisms and new data submitted during the aforementioned comment period;

I. On January 17, 1987, U.S. EPA, pursuant to Section 122 of CERCLA, 42 U.S.C. § 9622, notified Manville that the U.S. EPA had determined it to be a potentially responsible party ("PRP") regarding the proposed remedial action at the Facility and Manville has responded to said notice;

J. Considering the proposed plan for remedial action and the public comments received, U.S. EPA has reached a decision on a final remedial action plan;

K. U.S. EPA's decision on remedial action is in a final document called a Record of Decision ("ROD"), to which the State of Illinois ("State") has given its concurrence, and which includes a discussion of U.S. EPA's reasons for the final plan;

L. Pursuant to Section 121 of CERCLA, 42 U.S.C. § 9621, the remedial action selected in the U.S. EPA ROD, and implemented herein, attains legally applicable or relevant and appropriate standards, requirements, criteria or limitations under Federal environmental law and State environmental or facility siting law;

M. Pursuant to Section 121(d)(1) of CERCLA, U.S. EPA, the State of Illinois, and Manville believe that the remedial action plan adopted by U.S. EPA will attain a degree of clean-up of hazardous substances, pollutants and contaminants released into the environment and of control of further release which, at a minimum, assures protection of human health and the environment at the Facility;

N. The remedial action plan is in accordance with Section 121 of CERCLA, 42 U.S.C. § 9621, and with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300;

O. Manville agrees to perform the work outlined in Article V of this Consent Decree, which implements the remedial action plan, and U.S. EPA and the State have determined that the work required under the Consent Decree will be done properly by Manville, and that Manville is qualified to implement the remedial action plan;

P. The Illinois Environmental Protection Agency ("IEPA") is participating in the execution and implementation of this Consent Decree pursuant to Paragraph 1004 of Chapter 111-1/2 of the Illinois Revised Statutes; and

Q. The Parties recognize, and intend to further hereby, the public interest in avoiding prolonged and complicated litigation between the Parties, and the expedition of the cleanup of the Facility.

NOW, THEREFORE, it is hereby Ordered, Adjudged and Decreed:

I.

JURISDICTION

This Court has jurisdiction over the subject matter herein, and over the parties consenting hereto.

II.

PARTIES BOUND

This Consent Decree applies to and is binding upon the undersigned parties and their successors and assigns, including any reorganized company of Settling Defendant. The undersigned representative of Manville certifies that he is fully authorized by Manville to enter into the terms and conditions of the Consent Decree and to execute and legally bind Manville to it. Manville shall provide a copy of this Consent Decree to the contractor hired to perform the work required by this Consent Decree and shall require the contractor to provide a copy thereof to any subcontractor retained to perform any part of the work required by this Consent Decree.

III.

DEFINITIONS

Whenever the following terms are used in this Consent Decree and any Exhibits attached hereto, the definitions specified in this Article shall apply:

A. "Contractor" means the company or companies retained by or on behalf of Manville to undertake and complete the work required by this Consent Decree. Each contractor and subcontractor shall be qualified to do those portions of the work for which it is retained.

B. "Facility" means the "facility" as that term is defined at Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), where disposal of hazardous substances was conducted by Manville and its predecessor corporations, and where hazardous substances from those activities have come to be located, which facility is located within the city limits of Waukegan, Lake County, Illinois and is delineated on Exhibit 1 (attached hereto). The Facility includes an asbestos disposal pit, a sludge disposal pit, a waste water treatment system, and a miscellaneous disposal pit. The Facility is bordered generally on the east by Lake Michigan, on the north by Illinois Beach State Park, on the south by an electrical generating station, and on the west by the Manville manufacturing buildings.

C. "Future liability" refers to liability arising after Certification of Completion of Remedial Action by U.S. EPA and IEPA, pursuant to Article XXII hereof.

D. "Hazardous substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

E. "IEPA" means the Illinois Environmental Protection Agency.

F. "Manville" means Manville Sales Corporation, a Delaware Corporation.

G. "National Contingency Plan" shall be used as that term is used in Section 105 of CERCLA, 42 U.S.C. § 9605.

H. "Parties" means the United States of America, the State of Illinois and Manville.

I. "Plaintiff" means the United States of America and its respective agencies and departments.

J. "Remedial Action" means the Work as defined herein.

K. "(Amended) Remedial Work Plan" means the Final Remedial Work Plan adopted by U.S. EPA for implementation of remedial work at the Facility, as described in Article V hereof.

L. "Response Costs" means any costs incurred by Plaintiff or the State pursuant to 42 U.S.C. §§ 9601 et seq. or State law in connection with the Facility.

M. "Settling Defendant" means Manville Sales Corporation, its successors and assigns, including any reorganized company of Defendant.

N. "State" means the State of Illinois.

O. "United States" means the United States of America.

P. "U.S. EPA" means the United States Environmental Protection Agency.

Q. "U.S. DOJ" means the United States Department of Justice.

R. "Waste Materials" means any hazardous substances, as defined by 42 U.S.C. § 9601(14); or pollutant or contaminant as defined by 42 U.S.C. § 9601(33).

S. "Work" means the implementation, in accordance with Article V hereof, of the (Amended) Remedial Work Plan and any schedules or plans required to be submitted pursuant thereto.

IV.

GENERAL PROVISIONS

A. Financial Responsibility

1. On or before December 31, 1987 (prior to the final issuance of this Decree if necessary), Manville shall establish a cash escrow account ("Escrow Account") in an Illinois bank, in favor of plaintiff. Such Escrow Account shall bear escrow instructions that irrevocably commit all funds initially placed therein to payment of costs Manville becomes obligated to pay under this Consent Decree. If any funds

initially placed in the Escrow Account remain after payment of all such costs, such funds shall be payable to U.S. EPA and shall not, in any event, revert to Manville.

2. In the event this Consent Decree is not entered, then such Escrow Account shall be used as financial assurance for performance of Manville's obligations under any subsequent consent decree that covers the Work identified herein (or any portion thereof), in the same manner and to the same effect as specified in this Paragraph. In the event there is no such subsequent decree, then such Escrow Account shall be used by EPA for payment of response costs under CERCLA for which Manville shall subsequently become liable in connection with the Facility. In any event, the funds in the Escrow Account shall not revert to Manville.

3. The Escrow Account shall be funded with \$3.5 million in cash. The escrow instructions for the Escrow Account shall permit Manville, as escrow agent for and in behalf of U.S. EPA, to disburse such funds only to pay for expenditures necessary to accomplish the Work approved and required under this Decree. Such instructions shall also direct that Manville receive each month a copy of that month's statement of the Escrow Account, and that interest or earnings on the Escrow Account shall accrue to and be paid into the Escrow Account.

4. A second account ("Second Account") shall also be established by Manville no later than the date the balance remaining in the Escrow Account is reduced to \$500,000. Manville shall ensure that the funds in both Accounts total a minimum of \$500,000; at all times, until a Certificate of Completion of Construction is issued, unless otherwise agreed by the parties.

5. In addition to the foregoing requirements of this Article IV, Manville shall maintain sufficient funds to assure the uninterrupted progress and timely completion of all phases of the Work. Manville shall submit periodic financial reports to the parties on a quarterly basis, beginning on January 1 of each year, which includes cash flow projections that project the level of funds that will be necessary for the Work for the succeeding one year period.

B. Commitment of Manville

1. Manville agrees to finance and perform the Work as defined in Article III, Paragraph S.

2. The Work as defined in Article III, Paragraph S shall be completed in accordance with the standards, specifications and within the time periods set forth in this Consent Decree and in the (Amended) Remedial Work Plan.

3. Nothing in this Consent Decree shall constitute a preauthorization claim against the Hazardous Substance

Superfund under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq.

4. This Consent Decree was negotiated by the Parties in good faith to avoid protracted, expensive litigation. The Parties agree that nothing herein and no performance hereunder shall constitute or be construed or used as an admission or acknowledgement of the factual or legal allegations of the Complaint, Administrative Order or this Decree, or of any liability, fault or wrongdoing under any law, rule or regulation by Manville.

C. Permits and Approvals

1. All activities undertaken by Manville pursuant to this Consent Decree shall be undertaken in accordance with the requirements of all applicable local, state and federal laws, regulations and permits, except that CERCLA § 121(e)(1) shall apply to Work performed on-site at the Facility. The United States and the State have determined that the obligations and procedures authorized under this Consent Decree are consistent with the authority of the United States and the State under applicable law to establish appropriate remedial measures for the Facility.

2. Manville shall obtain all permits or approvals which are necessary to perform work outside the facility

under federal, state or local laws and shall submit timely applications and requests for any such permits and approvals.

V.

PERFORMANCE OF THE WORK BY MANVILLE

Listed below are the remedial actions for the Facility which Manville agrees to undertake pursuant to the terms of this Consent Decree. The parties acknowledge and agree that inclusion of these remedial actions in this Consent Decree, and plaintiff's agreement to these remedial actions shall not foreclose plaintiff from seeking performance of all terms and conditions of this Consent Decree, including the performance goals and standards set forth herein.

Pursuant to all terms and conditions of this Consent Decree, Manville agrees to undertake the following actions at the Facility:

1. Manville shall submit to U.S. EPA and IEPA a Remedial Work Plan to implement all portions of the remedial action plan as listed below. The Remedial Work Plan shall be submitted (i) within sixty (60) days of the effective date of this Consent Decree if the effective date of this Decree is on or before January 15, 1988, (ii) by March 15, 1988 if the effective date is after January 15, 1988, but on

or before March 15, 1988, or (iii) on the effective date if the effective date is after March 15, 1988:

a. Waste materials/soil in the inactive waste disposal areas of the site (marked on Exhibit 2, and excluding peripheral roads); shall be graded and covered with 24 inches of compacted non-asbestos-containing soils. Except on sloped surfaces (greater than 20%), the cover shall consist of six inches of sand overlain by 15 inches of native clayey soil as described in the Feasibility Study. On sloped surfaces, the six inch sand layer may be replaced with eight inches of clayey soil (making a total of 23 inches of clay) which provides equivalent freeze/thaw protection as the cover for level areas. In either case, three inches of topsoil will be placed over the clayey soil cover, and a vegetation cover will be established and maintained. All cover materials shall be tested for asbestos prior to placement, and any soils containing asbestos shall be rejected;

b. The asbestos disposal pit shall be closed in June 1989 and provided with 24 inches of cover as described above. Asbestos-containing waste materials disposed of prior to closure of the asbestos disposal pit shall be disposed of in accordance with the National Emission Standards for Hazardous Air Pollutants ("NESHAP") requirements located at 40 C.F.R. 61.156;

c. The miscellaneous disposal pit, sludge disposal pit, and wastewater treatment system will continue to operate, with waste materials and sludge to be placed where and as Manville decides, subject to applicable law, provided the provisions of Items j(5), k(5) and p (Article V(1)(j)(5), (k)(5),(p)) are observed; asbestos is no longer used in the manufacturing processes at the facility;

d. Any asbestos-containing waste material generated from reconstruction or other activities at the facility after June 1989 shall be disposed of off-site in an approved landfill;

e. A soil cover monitoring program shall be developed, and implemented by Manville, to ensure that no asbestos reaches the surface of the cover and becomes releasable to the air in the future;

f. Where feasible, one layer of nominal 12-inch thick riprap shall be placed on the interior slopes of settling basins. Four-inch thick bedding material shall be used to prevent erosion of soil beneath the riprap. All other exposed interior slopes shall be provided with soil cover as described in Item a (Article V(1)(a)) herein, with the exception of areas which will be used for ongoing miscellaneous waste disposal prior to completion of the remedial action. These areas shall be covered with 26 inches of clayey soils which shall be protected against erosion;

g. A plan shall be developed to ensure that no asbestos containing sludge is dredged from the wastewater treatment system in the future. This plan shall include (i) the discontinuance of systematic dredging activities in the 33-acre settling basin, and (ii) a one-time dredging of all waterways leading to the settling basin to a depth that exceeds the depth range of Manville's dredging equipment. The sludge generated as a result of (ii) above will be deposited in the asbestos disposal pit and covered with soil in accordance with NESHAP requirements. Any sludge removed from the settling basin in the future shall be tested for asbestos using U.S. EPA approved methods and disposed of in accordance with the Resource Conservation and Recovery Act, NESHAP and other applicable law.

h. The north, west, and south slopes of the waste disposal area shall be sloped with non-asbestos-containing soil to a ratio of two horizontal to one vertical and provided with soil cover with vegetation as described in Item a (Article V(1)(a)) herein (see Exhibit 2);

i. A minimum of 24 inches of non-asbestos-containing soil shall be placed on top of all dikes and dike roadways on-site. On heavily used dike roadways this 24 inches may include eight inches of compacted gravel, and on lightly travelled dike roadways it may include four inches

of compacted gravel. The gravel surfaces shall be appropriately maintained by Manville;

j. A groundwater and surface water detection-monitoring system shall be developed, and implemented by Manville as follows: ;

1. A system of monitoring wells and surface water monitoring locations shall be established approximately as indicated on Exhibit 3. They shall be installed consistent with the (Amended) Remedial Work Plan;

2. Upon installation, the wells and sampling locations shall be sampled quarterly for two years for asbestos, lead, chromium, arsenic and other organic and inorganic water quality parameters which are Hazardous Substances and which can be attributed to waste disposal practices at the Facility based on a source list identifying chemicals received and used by the Manville Waukegan Plant which shall be provided to U.S. EPA and IEPA in the (Amended) Remedial Work Plan. This list shall indicate materials used in each process or to produce each end product as well as materials used for general applications at the facility;

3. Except as described at Item j(4) (Article V(1)(j) (4)) below, after two years of quarterly monitoring, further monitoring shall be done every five years for parameters to be determined based on existing data;

4. In the event any measured groundwater quality parameter is statistically determined to exceed background (upgradient) levels or promulgated drinking water standards (i.e., maximum contaminant levels ("MCLs") or equivalent where no MCL has been promulgated), whichever is higher, a contingency plan shall be implemented. Manville retains the right to seek alternative concentration limits ("ACLs") in the event of such exceedances. The level of asbestos in groundwater which shall cause the contingency plan to go into effect shall be 7.1 MFL > 10 μ m fibers, or whatever groundwater standard for asbestos is promulgated in the future;

5. In the event any measured surface water quality parameter is statistically determined to exceed background levels or established surface water standards (i.e., Illinois Water Quality Standards and/or numerical standards established in the Great Lakes Water Quality Agreement of 1978, or equivalent where no such standards have been promulgated), whichever is higher, a contingency plan shall be implemented. Manville retains the right to seek alternative concentration limits ("ACLs") in the event of such exceedances. The level of asbestos and arsenic in surface water which shall cause the contingency plan to go into effect shall be 7.1 MFL > 10 μ m fibers for asbestos, 50 ug/l for total arsenic, 48 ug/l, for pentavalent arsenic, and 190 ug/l for

trivalent arsenic, or whatever applicable surface water standards for asbestos and arsenic are promulgated in the future;

6. The contingency plan shall require appropriate monitoring and assessment to confirm the exceedance and identify any causes, evaluation of potential remedial alternatives, and implementation of a remedial alternative consistent with the National Contingency Plan as it may be amended;

7. This monitoring program shall continue for a minimum of 30 years. After that time, U.S. EPA will evaluate the need for further monitoring and require appropriate action to be taken by Manville;

k. An air monitoring program shall be developed and implemented by Manville at the site as follows:

1. During remedial construction activities, air monitoring as described in Exhibit 4 shall be conducted;

2. After completion of remedial construction and establishment of vegetation on the cover at the site, Manville shall conduct air sampling to determine concentrations of asbestos, lead, TSP and chromium in the air. A sufficient number of monitoring stations will be employed to thoroughly characterize background, on-site and downwind air quality. Sampling will be conducted during the dry season and shall not immediately follow a rainfall event, as approved by the U.S. EPA technical staff;

3. Except as described in Item k(4) (Article V(1)(k) (4)) below, the above sampling described in Item k(2) (Article V(1)(k)(2)) above shall be repeated every five years;

4. In the event concentrations are statistically determined to exceed applicable established ambient air quality standards (if any), or background levels, whichever are higher, then a contingency plan shall be implemented;

5. The contingency plan shall require appropriate monitoring and assessment to confirm the exceedance and identify any causes, evaluation of potential remedial alternatives, and implementation of a remedial alternative consistent with the National Contingency Plan as it may be amended. If a TSP exceedance is not determined to be attributable to failure of the remedial action herein, there shall be no further action relative to such exceedance under this Consent Decree. Manville shall retain the right to apply for appropriate variances;

6. This monitoring program shall continue for a minimum of 15 years. After that time, U.S. EPA shall evaluate the need for further monitoring and require appropriate action to be taken by Manville;

1. Debris from the beach and southwest portion of the waste disposal area shall be periodically cleaned up;

m. The eastern site boundary shall be fenced to limit access;

n. Additional warning signs shall be placed along the site perimeter;

o. The southeast ditch (see Exhibit 1) shall be closed as described in Item f (Article V(1)(f));

p. The active waste disposal areas (miscellaneous disposal pit, sludge disposal pit, and wastewater treatment system) shall be sampled to verify Manville's claims that no asbestos has been deposited in the miscellaneous disposal pit, no asbestos-containing sludge is near the surface of the sludge disposal pit, and no hazardous wastes are entering the wastewater treatment system. The influent to the wastewater treatment system shall be sampled after each significant manufacturing process change;

q. The open area in the northeast corner of the miscellaneous disposal pit (see Exhibit 2) shall be closed as described in Item a (Article V(1)(a));

r. Peripheral ditches shall be constructed to collect site run-off and channel it to the industrial canal;

s. Dikes shall be constructed at the depressed areas along the north side of the industrial canal to prevent industrial canal water from migrating off-site.

The Remedial Work Plan shall be written in sufficient detail to fully address all necessary design parameters of

the recommended alternative and shall contain a schedule for their implementation which, at a minimum, shall call for start of remedial action by April 1988 (or 30 days after approval of the (Amended) Remedial Work Plan, whichever is later) and completion thereof by December 1989 (or 22 months after the date of remedial action start if it falls after June 1988). In addition, the (Amended) Remedial Work Plan shall include, at a minimum, the following elements:

- Site Health and Safety Plan
- Emergency and Contingency Plan
- Quality Assurance Project Plan and Sampling and Analysis Plan for all sampling activities
- Equipment and Personnel Decontamination Procedures

2. U.S. EPA, after review of the Remedial Work Plan and concurrence by IEPA, will notify Manville in writing of any required modification, conditional approval, approval or disapproval of the Plan. Upon notification of disapproval or the need for modification, Manville shall make all required modifications in the Remedial Work Plan and submit an Amended Remedial Action Work Plan, including final plans and specifications, within 30 days of receipt of U.S. EPA notice, subject to the dispute resolution provisions of Article XII of this Consent Decree. If approved, the (Amended) Remedial Work Plan shall become an integral and enforceable element of this Consent Decree.

3. Manville shall begin implementation of the (Amended) Remedial Work Plan immediately upon receipt of written approval by U.S. EPA. Manville shall complete the tasks outlined in the (Amended) Remedial Work Plan in accordance with the schedule approved therein.

4. The Site Health and Safety Plan developed pursuant to the (Amended) Remedial Work Plan shall be in accordance with U.S. EPA's guidance and protocol. After approval of the Site Health and Safety Plan by U.S. EPA and concurrence by IEPA, Manville shall implement the Plan during all phases of activity at the Facility.

5. All instructions by the U.S. EPA On-scene Coordinator or Remedial Project Manager in connection with the work to be performed at the Facility, which are consistent with the terms of this Consent Decree and with the National Contingency Plan, 40 C.F.R. Part 300, shall, whenever feasible, be provided in writing and be binding upon Manville, subject to the dispute resolution provisions of Article XII.

6. Manville shall provide access to the Facility to U.S. EPA employees, contractors, agents, and consultants, as well as to representatives of the Illinois Environmental Protection Agency, at all reasonable times, and shall permit such persons to be present and move freely about the area in order to conduct inspections, take samples, and to conduct other activities which U.S. EPA and IEPA determine to be

necessary. In the event the U.S. EPA or IEPA expect to conduct a sampling event on-site, they shall provide to Manville reasonable advance notice.

VI.

**U.S. EPA PERIODIC REVIEW TO ASSURE
PROTECTION OF HUMAN HEALTH AND ENVIRONMENT**

Pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), U.S. EPA shall review the remedial action at the Facility at least every five (5) years after the entry of this Consent Decree and initiation of the (Amended) Remedial Work Plan to assure that human health and the environment are being protected by the remedial action being implemented. If upon such review, U.S. EPA, with IEPA concurrence, determines that further response action in accordance with Section 104 or 106 of CERCLA, as it may be amended, is appropriate at the Facility, then, consistent with Article XVI, the U.S. EPA may take or require such action.

Upon completion of its review pursuant to this Article, U.S. EPA, after IEPA concurrence, shall notify Manville of its determination and may order additional response action pursuant to Section 106 of CERCLA to assure protection of human health and the environment. Manville shall be provided with an opportunity to confer with U.S. EPA and IEPA on any proposed response action and to submit written comments for

the record. After the period for submission of written comments is closed, the Regional Administrator of U.S. EPA shall, in writing, either affirm, modify or rescind the order for further response action.

VII.

QUALITY ASSURANCE

Manville shall use quality assurance, quality control, and chain of custody procedures for all data gathered under this Consent Decree in accordance with U.S. EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans," (QAM-005/80) and subsequent amendments to such guidelines. Sampling data generated consistent with the QAPP shall be admissible, without objection, in any proceedings under Article XII.

Manville shall assure that U.S. EPA personnel or authorized representatives are allowed access to any laboratory utilized by Manville in implementing this Consent Decree. In addition, Manville shall have an approved laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring.

VIII.

FACILITY ACCESS, SAMPLING, DOCUMENT AVAILABILITY

A. To the extent that the Facility or other areas where Work is to be performed hereunder is presently owned by parties other than those bound by this Consent Decree, Manville shall obtain access agreements from the present owners within thirty (30) calendar days of the date such access is determined to be necessary for purposes of implementing the requirements of this Consent Decree. Such agreement shall provide access to U.S. EPA, IEPA and their authorized representatives. If such access agreements are not obtained within the time specified herein, Manville shall so notify U.S. EPA and IEPA.

B. Manville shall make available to U.S. EPA and IEPA the results of all sampling and/or tests or other data generated by Manville with respect to the implementation of this Consent Decree, and Manville shall submit these results in monthly progress reports as described in Article IX of this Consent Decree.

C. At the request of any Party, the Parties shall allow split or duplicate samples to be taken by the requestor or their authorized representatives, of any samples collected by any party pursuant to the implementation of this Consent Decree. Manville shall notify U.S. EPA and IEPA not

less than fourteen (14) days in advance of any sample collection activity.

IX.

REPORTING REQUIREMENTS

A. Manville shall provide to U.S. EPA and IEPA written monthly progress reports which: (1) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month, as well as such actions, sample collection, data and plans which are scheduled for the next month; (2) include all results of sampling and tests and all other data received by Manville during the previous month; (3) include all plans and procedures completed under the (Amended) Remedial Work Plan during the previous month; and (4) include a statement of the balances in the Escrow Account and the Second Account required by Article IV. These progress reports are to be submitted to U.S. EPA and IEPA by the tenth day of every month following the effective date of this Consent Decree.

B. Upon the occurrence of any event during the remedial action which, pursuant to Section 103 of CERCLA, requires reporting to the National Response Center, Manville shall promptly orally notify the U.S. EPA representative or, in the event of his unavailability, the Emergency Response Unit, Region V, United States Environmental Protection Agency, in addition to the reporting required by Section 103,

and shall in all other ways comply with Section 103. Such events shall be reported in the required monthly progress reports.

C. If the date for submission of any item or notification required by this Consent Decree falls upon a weekend or state or federal holiday, the time period for submission of that item or notification is extended to the next working day following the weekend or holiday.

X.

REMEDIAL PROJECT MANAGER/PROJECT COORDINATORS

A. U.S. EPA shall designate a Remedial Project Manager ("RPM") and IEPA shall designate a Project Coordinator for the Facility, and the plaintiff may designate other representatives, including U.S. EPA and IEPA employees, and federal and state contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. The RPM shall have the authority lawfully vested in an RPM by the National Contingency Plan, 40 C.F.R. Part 300. Manville shall also designate a Project Coordinator who shall have primary responsibility for implementation of the Work at the Facility.

B. To the maximum extent possible, except as specifically provided in the Consent Decree, communications between Manville, IEPA and U.S. EPA concerning the terms and

conditions of this Consent Decree shall be made between the Project Coordinators and the RPM.

C. Within twenty (20) calendar days of the effective date of this Consent Decree, Manville, IEPA and U.S. EPA shall notify each other, in writing, of the name, address and telephone number of the designated Project Coordinator and an Alternate Project Coordinator or RPM and Alternate RPM.

XI.

FORCE MAJEURE

A. "Force Majeure" for purposes of this Consent Decree is defined as any event arising from causes beyond the control of Manville which delays or prevents the performance of any obligation under this Consent Decree. "Force Majeure" shall not include contractor or subcontractor misfeasance, malfeasance or nonfeasance, increased costs or expenses, or non-attainment of the goals and standards set forth in Article V hereof or the (Amended) Remedial Work Plan.

B. When circumstances are occurring or have occurred which may preclude compliance with the schedule set forth in this Decree or the (Amended) Remedial Work Plan, whether or not caused by a "force majeure" event, Manville shall promptly notify the RPM and the State Project Coordinator by telephone within 24 hours, or in the event of their unavail-

ability, the Director of the Waste Management Division of U.S. EPA. Within five (5) days of the event which Manville contends is responsible for the delay, Manville shall supply to plaintiff in writing the reason(s) for and anticipated duration of such delay, the measures taken and to be taken by Manville to prevent or minimize the delay, and the timetable for implementation of such measures. Failure to give oral notice to the RPM and IEPA Project Coordinator and to give written explanation to Plaintiff in a timely manner shall constitute a waiver of any claim of force majeure.

C. If U.S. EPA agrees that a delay is or was attributable to a "force majeure" event, the Parties shall modify the (Amended) Remedial Work Plan to provide such additional time as may be necessary to allow the completion of the specific phase of Work and/or any succeeding phase of the Work affected by such delay, with such additional time not to exceed the actual duration of the delay.

D. If U.S. EPA and Manville cannot agree whether the reason for the delay was a "force majeure" event, or whether the duration of the delay is or was warranted under the circumstances, the Parties shall resolve the dispute according to Article XII herein. Manville has the burden of proving force majeure as a defense to noncompliance with this Decree.

XII.

DISPUTE RESOLUTION

A. As required by Section 121(e)(2) of CERCLA, the Parties to this Consent Decree shall at all times and in good faith attempt to resolve expeditiously and informally any disagreements concerning implementation of this Consent Decree or any Work required thereunder.

B. In the event that any dispute arising under this Consent Decree is not resolved expeditiously through informal means, any party desiring dispute resolution under this Article shall give prompt written notice to the other party to this Consent Decree.

C. Within ten (10) days of the service of notice of dispute pursuant to the preceding paragraph, the party who gave the notice shall serve on the other parties to this Consent Decree a written statement of the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis or opinion supporting its position, and all supporting documentation on which such party relies (hereinafter the "Statement of Position"). The opposing party shall serve its Statement of Position, including supporting documentation, no later than ten (10) days after receipt of the complaining party's Statement of Position. Within five (5) days thereafter, the complaining party may submit a reply.

In the event that these 10-day time periods for exchange of Statements of Position may cause a delay in the Work, U.S. EPA may shorten said time periods upon, and in accordance with, notice by U.S. EPA.

D. An administrative record of any dispute under this Article shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, the Statements of Position and any reply thereto served pursuant to the preceding paragraphs, and any other relevant information submitted by any party to this Consent Decree within the time periods specified in Article XII(C). The record shall be available for review by all parties.

E. Upon review of the administrative record, U.S. EPA shall issue a final decision and order resolving the dispute. This order shall be enforceable administratively pursuant to Section 121(e)(2) of CERCLA, subject to the rights of judicial review set forth in the following paragraph.

F. Any decision and order of U.S. EPA pursuant to the preceding paragraph shall be reviewable by this Court pursuant to Section 113 of CERCLA, provided that a Notice of Judicial Appeal is filed within 10 days of receipt of U.S. EPA's decision and order, until the date of termination of this Decree specified in Article XXII hereof. Thereafter, judicial review will be available only by instituting new action(s) to the extent permitted by law.

G. Unless U.S. EPA finds, or the Court orders otherwise, or Manville prevails in the dispute resolution proceedings, the invocation of these procedures shall not extend or postpone Manville's obligations under this Decree with respect to the disputed issue, including the accrual of stipulated penalties pursuant to Article XV.

XIII.

RETENTION AND AVAILABILITY OF INFORMATION

A. Manville shall make available to U.S. EPA and IEPA, and shall retain, during the pendency of this Consent Decree, and for a period of ten (10) years after its termination, all records and documents in its possession, custody, or control, or in the possession, custody or control of the contractor and subcontractors, which relate to the performance of this Consent Decree, including, but not limited to, documents reflecting the results of any sampling, tests, or other data or information generated or acquired by Manville, or on Manville's behalf, with respect to the implementation of this Consent Decree, subject to Manville's rights under its attorney-client privilege and the attorney trial preparation doctrine. After the ten (10) year period of document retention, Manville shall notify U.S. EPA, IEPA and U.S. DOJ at least ninety (90) calendar days prior to the destruction of any such documents, and upon request by U.S. EPA or IEPA,

Manville shall relinquish custody of the documents to U.S. EPA or IEPA.

B. Manville may assert business confidentiality claims covering part or all of the information provided in connection with this Consent Decree in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and pursuant to 40 C.F.R. § 2.203(b) and applicable State law.

C. Information determined to be confidential by U.S. EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B and, if determined to be entitled to confidential treatment under State law by IEPA, afforded protection under State law by IEPA. If no such claim accompanies the information when it is submitted to the U.S. EPA, the public may be given access to such information without further notice to Manville.

D. Information acquired or generated by Manville in performance of the Work that is subject to the provisions of Section 104(e)(7)(f) of CERCLA, 42 U.S.C. § 9604(e)(7)(f), shall not be claimed as confidential by Manville.

XIV.

REIMBURSEMENT

A. Manville shall pay, within 45 days of the entry of this Consent Decree, \$153,114.15 dollars to the EPA Hazardous Substances Response Trust Fund, delivered to the U.S.

EPA, Superfund, P.O. Box 371003M, Pittsburgh, Pennsylvania, 15251, in the form of a certified or cashier's check payable to "EPA Hazardous Substances Trust Fund," and shall send a copy of such check to Director, Waste Management Division, Region V.

B. The payments made under Subparagraph A of this Article are reimbursement of past costs claimed by the United States in this action.

C. Within sixty (60) days of the entry of this Decree, Plaintiff and the State shall submit to Manville itemized statements for all remaining oversight costs due under the Consent Order. Manville shall pay such oversight costs within thirty (30) days of receipt of such statements, or within thirty (30) days of the United States' or the State's response to a first request by Manville for additional supporting documentation.

D. Manville shall pay all oversight costs of the United States incurred after the entry of this Consent Decree and in overseeing implementation of the Work which are not inconsistent with the NCP.

Payments shall be made by Manville on an annual basis and within 30 days of the submission of an itemized cost statement and supporting documentation by the United States (or within 30 days of the United States' response to a first request by Manville for additional supporting

documentation). Payments shall be made as specified in Subparagraph A of this Article.

If any oversight costs are outstanding at the time the United States and the State plan to terminate this Consent Decree, Manville shall, within thirty (30) days of the submission of an itemized cost statement and supporting documentation by the United States and the State (or within 30 days of the United States or the States' response to a first request by Manville for additional supporting documentation) and, in any event, prior to termination of this Consent Decree, pay such oversight costs.

E. The Response Costs set forth in Subparagraph B of this Article are not inconsistent with the National Contingency Plan.

F. Manville shall pay all oversight costs of the State that (i) are not inconsistent with the NCP, (ii) are incurred after entry of this Consent Decree and in overseeing implementation of the Work, and (iii) do not exceed a cumulative total of \$30,000 (unless the scope of the (Amended) Remedial Work Plan and measures required therein are significantly expanded beyond that specified in Article V, in which case the \$30,000 cap shall be raised by the amount of oversight costs attributable to such expanded scope).

Payments shall be made by Manville on an annual basis and within 30 days of submission of an itemized cost statement and supporting documentation by the IEPA (or

within thirty (30) days of the IEPA's response to a first request by Manville for additional supporting documentation). Payments shall be made payable as specified in Subparagraph H of this Article.

G. Manville further acknowledges that the State claims that the total past Response Costs incurred by it through December 10, 1987 in connection with the Facility total \$15,571.00.

H. Manville, shall pay, within forty-five (45) days of the entry of this Consent Decree, \$15,571.00 to the State by means of a check made payable to "Treasurer, State of Illinois, for deposit in the Hazardous Waste Trust Fund" and delivered to IEPA, Division of Administration, Fiscal Services Section, 2200 Churchill Road, Springfield, Illinois 62794-9276.

I. The Response Costs set forth in Subparagraph G of this Article were incurred by the State and are not inconsistent with the National Contingency Plan.

J. Manville shall pay all oversight costs of the Illinois Attorney General that (i) are not inconsistent with the NCP, (ii) are incurred after September 30, 1987 and in overseeing implementation of the Work, and (iii) do not exceed a cumulative total of \$5,000 (unless the scope of the (Amended) Remedial Work Plan and measures required therein are significantly expanded beyond that specified in Article V, in which case the \$5,000 cap shall be raised by

the amount of oversight costs attributable to such expanded scope).

Payments shall be made by Manville on an annual basis and within 30 days of submission of an itemized cost statement and supporting documentation by the Illinois Attorney General (or within thirty (30) days of the Illinois Attorney General's response to a first request by Manville for additional supporting documentation). Payments shall be made payable to "Treasurer, State of Illinois, for deposit in the Environmental Protection Trust Fund" and delivered to Illinois Attorney General, Chief, Environmental Control Division, 100 W. Randolph, 12th floor, Chicago, Illinois, 60601.

XV.

STIPULATED PENALTIES

A. Manville shall be liable for payment into the Hazardous Substances Response Trust Fund administered by the U.S. EPA of the sums set forth below as stipulated penalties for each week or part thereof that Manville fails to submit a report or document or comply with a schedule in accordance with the requirements of Article V or the (Amended) Remedial

Work Plan, subject to Article XII(g) herein. Such sums shall be due and payable within fifteen (15) days of receipt of notification from the U.S. EPA assessing the penalties. These stipulated penalties shall accrue in the amount of (1) \$2,000 per day for the first week, and \$4,000 per day for each day thereafter for noncompliance with any schedule contained in this Consent Decree, with the exception of submission of Progress Reports; or (2) \$500 per day for the first week and \$1,000 per day for each day thereafter for noncompliance with any schedule contained in the (Amended) Remedial Work Plan and submission of Progress Reports. All penalties begin to accrue on the day following the day that complete performance is due, and continue to accrue through the final day of correction of the noncompliance. Payment of penalties shall not alter in any way Manville's obligation to complete performance. Any payments of penalties pursuant to this Article that are late shall be assessed interest and penalties according to Chapter 7 of the U.S. EPA's Financial Management Manual.

B. Notwithstanding the stipulated penalties provisions of Subparagraph A of this Article, U.S. EPA may elect to assess civil penalties or bring an action in U.S. District Court pursuant to Section 109 of CERCLA, as amended by SARA, to enforce the provisions of this Consent Decree, provided that Manville's total penalty exposure for violations

of this Decree shall be limited to \$25,000 per day per violation. Payment of stipulated penalties shall not preclude U.S. EPA from electing to pursue any other remedy or sanction to enforce this Consent Decree, and nothing shall preclude U.S. EPA or the State from seeking statutory penalties against Manville for violations of statutory or regulatory requirements.

XVI.

COVENANT NOT TO SUE

A. In consideration of actions which will be performed and payments which will be made by Manville under the terms of the Consent Decree, and except as otherwise specifically provided in this Decree, the United States and the State hereby covenant not to sue Manville or its officers, directors, employees, or agents for Covered Matters. Covered Matters shall include any and all judicial or administrative claims available to plaintiff or the State on the facts surrounding the transactions or occurrences as described in plaintiff's complaint against Manville including, but not limited to, such claims as may be raised under Sections 106 and 107 of CERCLA and Section 7003 of RCRA, and common law nuisance. With respect to future liability, this covenant not to sue shall take effect upon certification by U.S. EPA of completion of the remedial action concerning the Manville Waukegan Facility required under this Consent Decree.

B. "Covered Matters" does not include:

- (1) Liability arising from hazardous substances removed from the Site;
- (2) Natural Resource damages;
- (3) Criminal liability;
- (4) Claims based on a failure by Manville to meet the requirements of this Consent Decree; or
- (5) Liability for violations of federal or state law which occur during implementation of the remedial action.

C. Notwithstanding any other provision in this Consent Decree, (1) the United States and the State reserve the right to institute proceedings in this action or in a new action or to issue an Order seeking to compel Manville to perform any additional response work at or emanating from the Facility, or (2) the United States and the State reserve the right to institute proceedings in this action or in a new action seeking to reimburse the United States or the State for its response costs and to reimburse the State for its matching share of any response costs for action undertaken under CERCLA, relating to the Facility, if:

1. For proceedings prior to U.S. EPA and IEPA certification of completion of the remedial action concerning the Facility,

(a) conditions at the Facility, previously unknown to the United States or IEPA, are discovered after the entry of this Consent Decree, or

JOHNS-MANVILLE DISPOSAL AREA
WAUKEGAN, ILLINOIS

EXHIBIT 4

AIR MONITORING DURING REMEDIAL CONSTRUCTION

(Same as Section 4.2.1.7 of Final Feasibility Study Report)

Environmental monitoring would be required to assess airborne releases of contaminants during the waste handling and grading operation. This would consist of the use of personal samplers, using 0.8 micrometer porosity filter, in the breathing zone of workers on the site. Exposure of any worker would not exceed 8-hr weighted average airborne asbestos concentration of 0.2 fibers/cubic centimeter and a ceiling concentration of 10 fibers/cubic centimeter for fibers longer than 5 micrometers.

(b) information is received, in whole or in part, after the entry of this Consent Decree, and these previously unknown conditions or this information indicate that the remedial action is not protective of human health and the environment.

2. For proceedings subsequent to U.S. EPA and IEPA certification of completion of the remedial action concerning the Facility,

(a) conditions at the Facility, previously unknown to the United States or IEPA, are discovered after the certification of completion by U.S. EPA, or

(b) information received, in whole or in part, after the certification of completion by U.S. EPA or IEPA, and these previously unknown conditions or this information indicate that the remedial action is not protective of human health and the environment.

D. Notwithstanding any other provision in this Consent Decree, the covenant not to sue in Subparagraph A of this Article shall not relieve Manville of its obligation to meet and maintain compliance with the requirements set forth in this Consent Decree, and the United States and the State reserve their rights to take response actions at the Facility in the event of a breach of the terms of this Decree and to seek recovery of costs incurred after entry of the Decree:

1) resulting from such a breach; 2) relative to any portion of the work funded or performed by the United States or IEPA; or 3) incurred by the United States or IEPA as a result of having to seek judicial assistance to remedy conditions at or adjacent to the Facility.

E. Nothing in this Decree shall constitute or be construed as a release or a covenant not to sue regarding any claim or cause of action against any person, firm, trust, joint venture, partnership, corporation or other entity not a signatory to this Decree for any liability it may have arising out of or relating to the Manville Waukegan Facility. Plaintiff expressly reserves the right to sue any person other than Manville in connection with the Manville Waukegan Facility.

XVII.

OTHER CLAIMS

A. Manville agrees to indemnify, save and hold harmless the United States, the State and/or their representatives from any and all claims or causes of action arising from acts or omissions of Manville and/or its representatives in carrying out the activities pursuant to this Consent Decree, except for such claims or causes of action arising from acts or omissions of the United States Government, and the State, their employees, agents, and assigns. The United States and

the State shall notify Manville of any such claims or actions within sixty (60) working days of receiving notice that such a claim or action is anticipated or has been filed. The United States and the State agree not to act with respect to any such claim or action without first providing Manville an opportunity to participate.

B. The United States and the State under this agreement are not to be construed as parties to, and do not assume any liability for, any contract entered into by Manville in carrying out the activities pursuant to this Consent Decree. The proper completion of the Work under this Consent Decree is solely the responsibility of Manville.

C. Manville shall not assert any claims against the Hazardous Substances Trust Fund under CERCLA that are related to money paid or Work performed pursuant to this Consent Decree, except that Manville reserves all rights it may have in the event U.S. EPA institutes a new action.

D. Plaintiff agrees that, upon entry of this Consent Decree, the terms, conditions and requirements of the Administrative Order by Consent described in The Preamble Section B above, with the exception of reimbursement of all oversight costs to the United States and the State, will have been fully and completely satisfied and completed by Manville to U.S. EPA's satisfaction. Upon entry of this Consent Decree and payment of all costs incurred by the United

States or the State under the Consent Order as provided for in Article XIV(C), the said Consent Order shall be terminated. This provision constitutes U.S. EPA's written notice that Manville has demonstrated that all of the terms of the Consent Order have been completed, receipt of which is hereby acknowledged by Manville, all as called for by Article XV of said Consent Order.

E. On September 1, 1987, U.S. EPA entered an Administrative Order against Manville requiring Manville to implement the ROD at the Facility, the allegations and terms of which Manville disputes and contests vigorously. Plaintiff agrees that, upon entry of this Decree, said Administrative Order shall be withdrawn and of no further force or effect. Plaintiff further agrees to waive and release Manville from any and all claims that may arise under said Administrative Order as a result of Manville's actions or inactions from September 1, 1987 until Plaintiff gives written notice to Manville that it does not intend to enter this Decree or until entry of this Decree. In the event Plaintiff determines not to enter this Decree, Plaintiff agrees to extend the effective date of the Administrative Order until the date it provides written notice of such determination.

XVIII.

NOTICES

Whenever, under the terms of this Consent Decree, notice is required to be given, a report or other document is required to be forwarded by one party to another, or service of any papers or process is necessitated by the dispute resolution provisions of Article XII hereof, such correspondence shall be directed to the following individuals at the addresses specified below:

As to the United States or
U.S. EPA:

As to the State of Illinois:

- | | |
|--|--|
| a. Regional Counsel
Attn: Johns-Manville
Waukegan Disposal Area
Coordinator
U.S. Environmental
Protection Agency
230 S. Dearborn Street
Chicago, Illinois 60604 | Illinois Environmental
Protection Agency
Attn: Manager, Remedial
Project Management Section
Division of Land Pollution
Control
2200 Churchill Road
Springfield, Illinois 62794-92 |
| b. Director, Waste
Management Division
Attn: Johns-Manville
Disposal Area Remedial
Project Manager (SHE)
U.S. Environmental
Protection Agency
230 S. Dearborn Street
Chicago, Illinois 60604 | |
| c. Assistant Attorney General
Land & Natural Resources Division
U.S. Department of Justice
10th Street & Pennsylvania Ave.
Washington, D.C. 20530 | |

As to Settling Defendant:

- a. Marvin Clumpus, P.E.
Manville Sales Corporation
P.O. Box 5108
Denver, Colorado 80217
- b. John Zackrison
Kirkland and Ellis
655 Fifteenth Street, N.W.
Suite 1200
Washington, D.C. 20005

XIX.

CONSISTENCY WITH
NATIONAL CONTINGENCY PLAN

The United States and the State agree that the Work, if properly performed as set forth in Article V hereof, is consistent with the provisions of the National Contingency Plan, pursuant to 42 U.S.C. § 9605.

XX.

RESPONSE AUTHORITY

Nothing in this Consent Decree shall be deemed to limit the response authority of the United States under 42 U.S.C. § 9604, or to alter the applicable legal principles governing the judicial review of U.S. EPA's Record of Decision concerning Remedial Action at the Facility.

XXI.

MODIFICATION

Except as provided for herein, there shall be no modification of this Consent Decree without written approval of all Parties to this Consent Decree.

XXII.

EFFECTIVE AND TERMINATION DATES

A. This Consent Decree shall be effective upon the date of its entry by the Court.

B. When Manville determines that it has completed an approvable unit of the Work (as agreed by U.S. EPA in the context of the (Amended) Remedial Work Plan, to include at least completion of construction, completion of required monitoring, completion of necessary corrective action) or that it has completed the remedial action, it shall submit to U.S. EPA and IEPA a Notification of Completion of Approvable Unit (or the Remedial Action) and a report as required by the (Amended) Remedial Work Plan. The report (which must be the final report under the (Amended) Remedial Work Plan in the event Manville is seeking a Certification of Completion of Remedial Action) must summarize the Work performed, any modification to the (Amended) Remedial Work Plan, and the

performance levels achieved. The summary shall include or reference any supporting documentation.

Upon receipt of a Notice of Completion, U.S. EPA and IEPA shall review the accompanying report and any other supporting documentation and conduct any other appropriate review. U.S. EPA, with the concurrence of IEPA, shall issue a Certification of Completion of Approvable Unit upon its determination that Manville has satisfactorily completed the approvable unit and has achieved any applicable standards of performance required under this Consent Decree. When Manville is seeking a Certification of Completion of Remedial Action, then after submittal of the Notice of Completion of Remedial Action, but prior to the issuance of such Certification of Completion, U.S. EPA shall undertake a review of the remedial action under Article VI. The Certification shall issue only if U.S. EPA determines, with concurrence of IEPA, that no corrective action under Article VI is necessary and that Manville has satisfactorily completed Remedial Action and achieved applicable standards of performance required under this Consent Decree.

XXIII.

PUBLIC PARTICIPATION

The United States shall publish a notice of this Consent Decree's availability for review and comment upon its

lodging with the United States District Court as a proposed settlement in this matter.

The United States will provide persons who are not parties to the proposed settlement with the opportunity to file written comments during at least a thirty (30) day period following such notice. The United States will file with the Court a copy of any comments received and the responses of the United States to such comments.

After the closing of the public comment period, the United States will review such comments and determine whether the comments disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper or inadequate, and that the consent should therefore be withdrawn. Should consent be withdrawn, the United States shall inform as to the basis for the withdrawal and any modifications necessary for consent to a settlement.

XXIV.

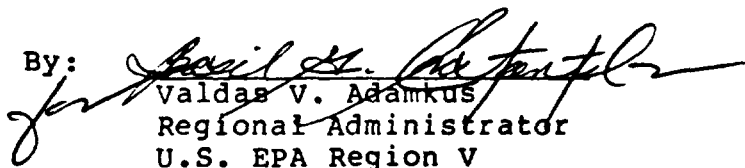
NOTICE TO THE FEDERAL NATURAL RESOURCES TRUSTEE

Pursuant to Section 122(j) of CERCLA, as amended, U.S. EPA has given notice to the Federal natural resource trustee of the negotiations with potentially responsible parties regarding the scope of remedial action at the Facility.

By the Signatures below each Settling Party's name,
Consent to this Decree is hereby given, and the United States and
State of Illinois hereby agree to the foregoing Consent Decree
Addendum: Stipulated Corrections:

UNITED STATES OF AMERICA

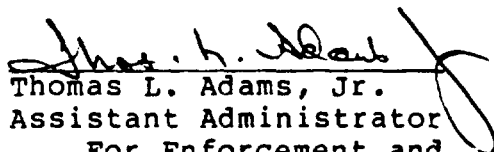
By:


Valdas V. Adamkus
Regional Administrator
U.S. EPA Region V

Date:

1-20-88

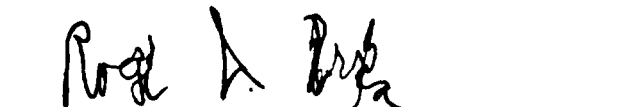
By:


Thomas L. Adams, Jr.
Assistant Administrator
For Enforcement and
Compliance Monitoring
U.S. EPA

Date:

1-29-88

By:

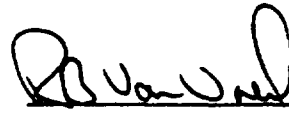

Roger J. Marzulla
Acting Assistant Attorney General
Land & Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date:

JAN 29 1988

MANVILLE SALES CORPORATION

By:



Date:

12/31/57

STATE OF ILLINOIS

By:

Richard J. Carlson
Richard J. Carlson
Director
Illinois Environmental
Protection Agency

Date: _____

By:

Jeff M. Hagg
Illinois Assistant Attorney General
As Attorney for the Illinois Environmental Protection Agency

Date: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MANVILLE SALES CORPORATION, INC.

Defendant.

CIVIL ACTION NO.

CONSENT DECREE ADDENDUM:
STIPULATED CORRECTIONS

The parties hereby agree that the foregoing Consent
Decree shall be corrected as follows:

<u>Page No.</u>	<u>Paragraph</u>	<u>Line No.</u>	<u>Change</u>
7	I.	1, 2	Change "United States of America and its" to "United States of America and the State of Illinois and their"
14	d.	2	Change "from reconstruction or other ac- tivities" to "from reconstruction, dredg- ing or other activities"
	e.	2, 3	Change "no asbestos reaches the surface of the cover" to "no asbestos or asbestos- containing material reaches the surface of the cover"
16	1.	3	Change "Exhibit 3. They shall be installed" to "Exhibit 3, and as approved by U.S. EPA and IEPA in the field. They shall be in- stalled"

<u>Page No.</u>	<u>Paragraph</u>	<u>Line No.</u>	<u>Change</u>
17	4.	2	Change "statistically determined to exceed" to "statistically determined, as specified in the contingency plan described in Item j(6), to exceed"
		3	Change "levels or promulgated drinking water" to "levels or the most stringent State or Federal promulgated drinking water"
	5.	2	Change "statistically determined to exceed" to "statistically determined, as specified in the contingency plan described in Item j(6), to exceed"
		3	Change "levels or established surface water" to "levels or the most stringent State or Federal established surface water"
18	7.	2	Change "U.S. EPA will" to "U.S. EPA and the State will"
	2.	9	Change "approved by the U.S. EPA technical staff;" to "approved by the U.S. EPA and IEPA technical staffs;"
19	6.	2	Change "U.S. EPA shall" to "U.S. EPA and the State shall"
21	2.	2	Change "and concurrence by IEPA, will" to "and concurrence by the State, will"
		4	Change "of the Plan. Upon notification" to "of the Plan. The State shall concur within 7 days of U.S. EPA's submission of its comments to the State or forfeit said right. Upon notification"
22	6.	2, 3, 4	Change "U.S. EPA employees, contractors, agents, and consultants, as well as to representatives of the Illinois Environmental Protection Agency, at all reasonable times," to "U.S. EPA and State employees, contractors, agents, and consultants at all reasonable times,"

<u>Page No.</u>	<u>Paragraph</u>	<u>Line No.</u>	<u>Change</u>
23	VI.	7	Change "such review, U.S. EPA, with IEPA concurrence, determines" to "such review, U.S. EPA determines"
		11	Change "EPA may take or require such action." to "EPA may take or require such action. The State shall be given the opportunity to comment upon any such further response action the U.S. EPA may take or require."
		13	Change "U.S. EPA, after IEPA concurrence, shall notify" to "U.S. EPA shall notify"
		17	Change "U.S. EPA and IEPA on any" to "U.S. EPA and the State on any"
25	A.	8	Change "U.S. EPA, IEPA and their" to "U.S. EPA, the State and their"
		11	Change "notify U.S. EPA and IEPA." to "notify U.S. EPA and the State."
28	B.	5	Change "State Project Coordinator by" to "State Project Coordinator or their alternates by"
29		2	Change "U.S. EPA. Within five (5)" to "U.S. EPA and the Director of IEPA. Within five (5)"
35	F.	1, 2	Change "of the State that (i) are" to "of the IEPA incurred after September 30, 1987 that (i) are"
36	G.	3	Change "December 10, 1987" to "September 30, 1987"
	H.	4	Change "Hazardous Waste Trust Fund" and" to "Hazardous Waste Fund" and"

<u>Page</u> <u>No.</u>	<u>Paragraph</u>	<u>Line No.</u>	<u>Change</u>
44			Add "a." to Illinois Environmental (in second column under "As to the State of Illinois:"
			Add "b. Chief, Environmental Control Div., Illinois Attorney General's Office, 100 W. Randolph Street, Chicago, Illinois 60601" in second column under "As to the State of Illinois:"
47		14	
48	XXIV.	4	Change "Completion, U.S. EPA shall undertake" to "Completion, U.S. EPA and IEPA shall undertake"
			Change "at the Facility." to "at the Facility. No notice has been made by IEPA to the State natural resource trustee because no State trustee has been appointed to date."

Date:

1/8/88

Agreed to this 8 day of January 1988 by Manville Sales Corporation.

MANVILLE SALES CORPORATION

By:

1. A. Kelly EVP

Date:

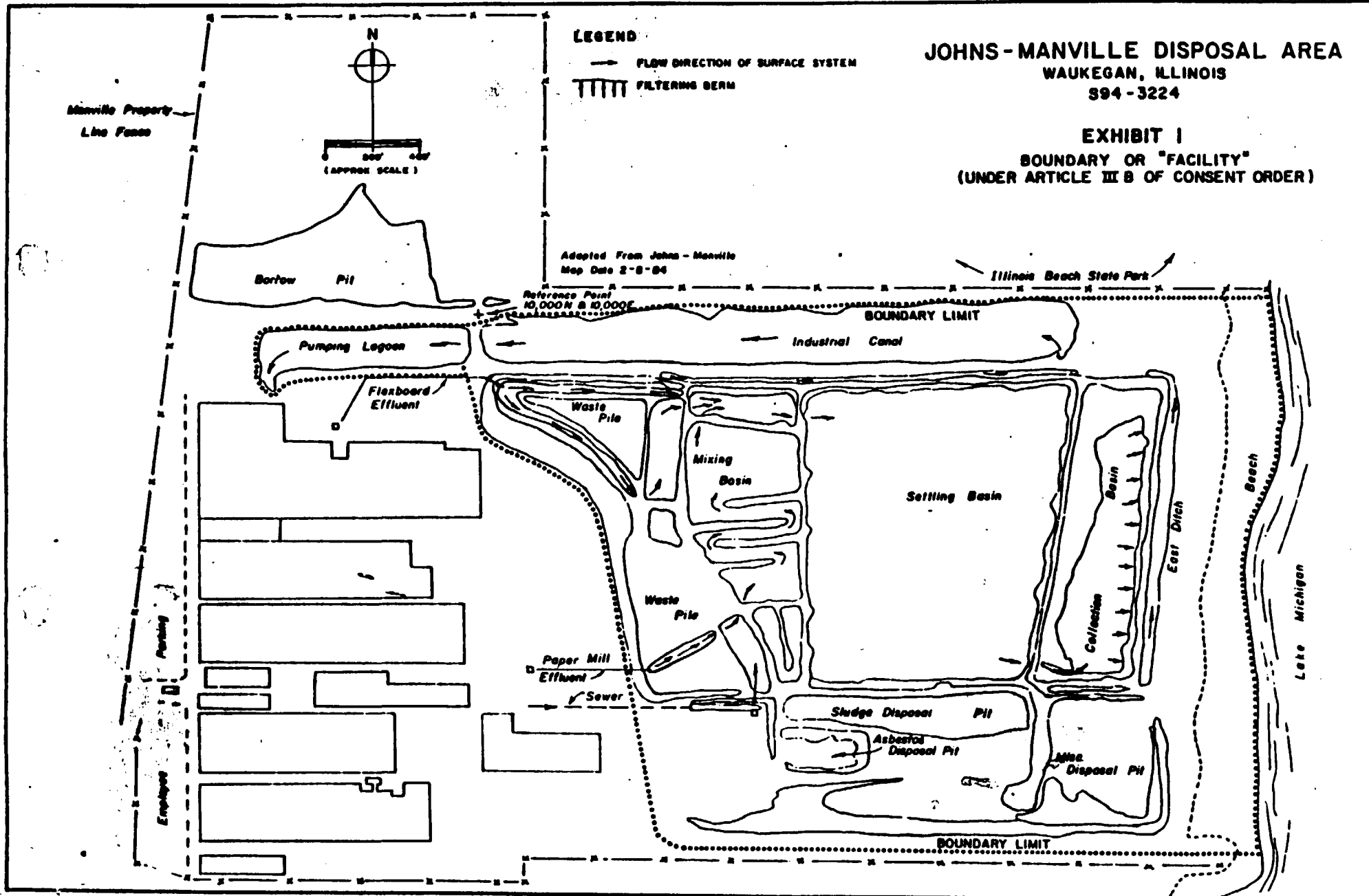
1/8/88

LEGEND

→ FLOW DIRECTION OF SURFACE SYSTEM
 FILTERING BERM

JOHNS - MANVILLE DISPOSAL AREA WAUKEGAN, ILLINOIS 394 - 3224

EXHIBIT I BOUNDARY OR "FACILITY" (UNDER ARTICLE III B OF CONSENT ORDER)



JOHNS-MANVILLE DISPOSAL AREA
WAUKEGAN, ILLINOIS
994-3224

EXHIBIT 2

SITE AREAS TO WHICH SOIL COVER
WILL BE APPLIED WITH VEGETATION
(SHADED)

